

WC 10-101

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APR 26 2010

Federal Communications Commission
Office of the Secretary

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
HAWAIIAN TELEPHONE COMPANY)
For Approval of CATV Cable Duct)
Agreement.)
_____)

DOCKET NO. 2437

DECISION AND ORDER NO. 4190

Filed March 25, 1976

At 10:30 o'clock A.M.

Bertha F. Kurosawa
(Acting) Chief Clerk for the Commission

(For service - see attached)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

| | |
|---------------------------------------|--------------------|
| In the Matter of the Application of) | |
| HAWAIIAN TELEPHONE COMPANY) | Docket No. 2437 |
| For Approval of CATV Cable Duct) | |
| Agreement.) | Decision and Order |
| _____) | No. 4190 |

DECISION AND ORDER

By application filed January 14, 1974, HAWAIIAN TELEPHONE COMPANY (Applicant hereafter), requested authorization, pursuant to Section 269-19, Hawaii Revised Statutes, to enter into CATV Cable Duct Agreements with CATV companies and approval of the proposed agreement. The agreement filed with the application was amended and marked as Exhibit 3A in this proceeding.

The agreement as amended, will encumber Applicant's property necessary or useful in the performance of its duties to the public. Section 269-19, Hawaii Revised Statutes, states: "No public utility corporation shall, sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or any part of its road, line, plant, system, or other property necessary or useful in the performance of its duties to the public, . . . , without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, . . . , made other than in accordance with the order of the commission shall be void."

Under the agreement as amended, Applicant proposes to charge 10¢ per linear foot of duct space per year to the CATV companies for the right to utilize available Hawaiian Telephone Company duct space and related facilities currently installed and in place.

The rate for use of available duct space was developed by applying standard revenue requirement factors to the Applicant's investment in the duct system being used by CATV operators. The base cost consists of costs incurred by the Applicant in both developer-provided ducts and telephone company-provided ducts. The base cost per linear foot of ducts was then multiplied by the Applicant's annual carrying charge factor and by a use factor to arrive at the rental rate. This reference to said annual carrying charge factor and use factor is without prejudice to the use of a different annual carrying charge factor or use factor.

Applicant does not propose to impose any undue restrictions on the uses that may be made of the channels by the CATV companies. The agreement as amended provides that any residual channel capacity may be used by the licensee (CATV operator) for any lawful purpose. The agreement as amended further provides that the equipment installed by the CATV operators will be of such a nature, type and quality that will not adversely affect or cause damage to Applicant's equipment and will not adversely affect telephone services provided by Applicant.

The agreement as amended provides that the CATV operator has a franchise or "permit" or license as provided

by law giving it the legal right to use the public rights-of-way and to construct, operate, or acquire, or extend an existing CATV system in the public right-of-way before Applicant will execute the agreement.

The agreement as amended provides that the CATV operator shall apply to Hawaiian Telephone Company for authority to install equipment in available Hawaiian Telephone Company ducts. The Applicant may authorize the CATV operator to install all CATV equipment and all such installations shall be in accordance with Applicant's established practices and in compliance with all of Applicant's rules and regulations and in compliance with all rules and regulations of governmental agencies. Applicant will control all installations to avoid interference with its service and to comply with the requirements of General Order No. 10.

The agreement as amended, under paragraph 25 therein is applicable for a period of two years with a re-opening clause thereafter and was prepared with the participation of the Hawaii Cable TV Association and representative of the CATV companies.

The Public Utilities Division concurred with the proposed rental rate of 10¢ per linear foot per year with the following conditions:

1. That the agreement be limited only to ducts and its related facilities currently installed and in place;
2. That all new and future duct construction be installed independently by the CATV companies and the Applicant and as a result there will be separate duct facilities for the CATV companies and the Applicant.

The Commission having considered the entire record herein and pursuant to Section 269-19, Hawaii Revised Statutes finds that:

1. The installation by CATV operators of CATV equipment in available ducts of the Applicant will not interfere with the Service requirements of the Applicant and that there are no undue restrictions on the uses that may be made of the channels by the CATV systems;
2. The purpose of the agreement, as amended is in accord with the intent of Chapter 440-G, Hawaii Revised Statutes;
3. The requirements of the Commission's General Order No. 10 will be met;
4. The agreement is limited to ducts and related facilities currently installed and in place as well as new ducts constructed and completed during the two-year period following the effective date of this Decision and Order;
5. The rental rate under the agreement as amended is fair and reasonable;
6. In the future, CATV companies should share in the cost with the other utilities for all new construction after the two-year period following the effective date of this Decision and Order. The contribution towards construction costs will be consistent with directives of the Public Utilities Commission with respect to common trenching, whether or not there is a requirement for separate conduits, and other cost sharing matters which may be in the public interest;
7. The Applicant study all alternatives for the joint use and arrangement of duct facilities with the CATV companies; and
8. The agreement as amended, will be in the public interest.

ACCORDINGLY, IT IS ORDERED, that:

The request of the Applicant be and it is hereby authorized to enter into CATV Cable Duct Agreements with the individual CATV companies and approval of the agreement is granted subject to the following conditions:

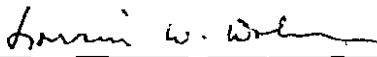
1. The agreement is limited only to ducts and related facilities currently installed and in place as well as new ducts constructed and completed during the two-year period following the effective date of this Decision and Order;
2. In the future, CATV companies should share in the cost with the other utilities for all new construction after the two-year period following the effective date of this Decision and Order. The contribution towards construction costs will be consistent with directives of the Public Utilities Commission with respect to common trenching, whether or not there is a requirement for separate conduits, and other cost sharing matters which may be in the public interest;
3. The disputes between Applicant and any CATV company arising out of the agreement, as amended shall be submitted to the Commission in accordance with paragraph 44 of the agreement approved herein;
4. The Applicant shall file with the Commission all supplemental or new agreements entered into between the Applicant and the individual CATV companies for its approval prior to execution;
5. Eighteen months after the effective date of this Decision and Order, the parties shall submit to the Commission, for its approval, a proposed plan for sharing of costs of new construction; and
6. The Commission retains its authority to review the agreement and re-open the proceeding at any time during the period of the agreement if necessary.


The approval of this agreement for a two-year period from the effective date of this Decision and Order does not excuse the payment of rental for use of ducts and other facilities agreed upon by the Applicant and other parties for periods prior to the effective date of this Decision and Order.

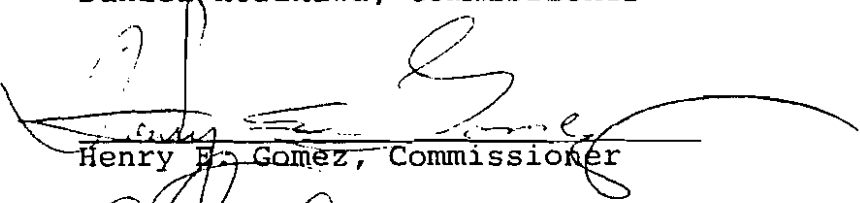
The effective date of this Decision and Order shall be upon service.

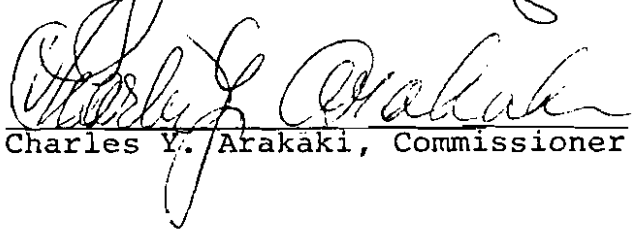
DONE at Honolulu, Hawaii this 25th day of
March, 1976, per motion passed by the Commission on
January 29, 1976.

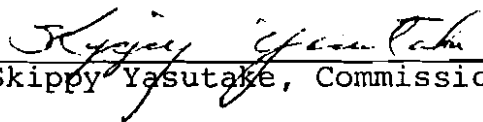
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII


Lorrin W. Dolim, Chairman

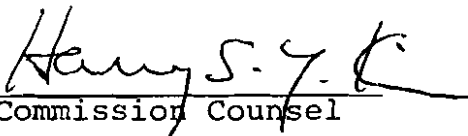

Daniel Horikawa, Commissioner


Henry B. Gomez, Commissioner


Charles Y. Arakaki, Commissioner


Skippy Yasutake, Commissioner

APPROVED AS TO FORM:


Commission Counsel